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C O N F I D E N T I A L SECTION 01 OF 03 THE HAGUE 000866

SIPDIS

E.O. 12958: DECL: 03/31/2015

TAGS: PREL PHUM MARR AF NL

SUBJECT: DASD WAXMAN'S CONSULTATIONS WITH GONL ON TREATMENT  
OF DETAINEES

REF: A. STATE 30940

1B. THE HAGUE 683

Classified By: CLASSIFIED BY POLITICAL COUNSELOR ANDREW SCHOFER FOR REA  
SONS 1.4 (B AND D)

11. (C) Summary: On March 24, DASD for Detainee Affairs Matthew Waxman met with senior Dutch MFA and MOD officials and a broad GONL interagency team concerning the treatment of detainees in the Global War on Terror. These consultations grew out of a recent request from FM Bot to Secretary Rice and DepSecDef Wolfowitz. DASD Waxman and his OSD team provided an overview of U.S. detainee policy and addressed specific GONL questions regarding U.S. policy on detainee matters in the War on Terrorism. GONL interlocutors repeatedly expressed their appreciation for the briefings which they had sought following strong parliamentary concerns related to the Dutch decision to deploy special forces as a coalition member in OEF. The GONL position as to the applicability of the Geneva Conventions and the laws of armed conflict (LOAC) to OEF differs from that of the USG. The GONL does not agree with the USG position that Al Qaeda and Taliban detainees are unlawful combatants under the laws of war. Both sides share the belief that detainees should be accorded humane treatment in accordance with the principles of the Conventions. The Dutch asked whether the U.S. might be willing to make a joint statement to this effect, as it would help the GONL manage its parliamentary concerns and might also prove useful for the U.S. in managing perceptions with other European allies. The Department of Defense agreed to consider the idea. End Summary.

12. (C) Deputy Assistant Secretary of Defense for Detainee Affairs Matthew Waxman, accompanied by OSD Associate General Counsels Eliana Davidson and Diane Beaver and Special Assistant for Detainee Affairs Bryan Del Monte visited The Hague on March 24 for consultations with the GONL concerning treatment of detainees in the Global War on Terror. This visit grew out of a request from FM Bot during his February meetings with Secretary Rice and Deputy Secretary of Defense Wolfowitz (ref A). The GONL has faced parliamentary pressure on this issue following the government's decision to deploy Dutch special operations forces (SOF) personnel to Afghanistan to participate in Operation Enduring Freedom. In a recent debate on the issue, MPs expressed strong concerns about U.S. treatment of detainees and the possibility that Dutch forces might detain Al Qaeda or Taliban members as part of combat operations (ref B).

13. (C) DASD Waxman first met with MFA Deputy Political Director Herman Schaper, MOD Deputy Political Director Jan-Dirk Siccama and MFA Special Ambassador for Human Rights Piet de Klerk. Schaper expressed the GONL's appreciation for the consultations further to FM Bot's request. He noted the differing views between the U.S. and the GONL as to whether Al Qaeda and Taliban detainees were unlawful combatants. He said that treatment of detainees had been used to criticize the west, and that since the Netherlands was strongly committed to the transatlantic link, the GONL wanted to help manage this issue and perhaps build a consensus among allies on the matter. Schaper said the GONL priority was to be sure that the minimum standards of international humanitarian law applied to detainees. Given that the Global War on Terror represents a new kind of warfare, Schaper suggested that perhaps international law needed to be adapted to address it.

14. (C) DASD Waxman expressed gratitude for Dutch participation and support in the Global War on Terror and said the purpose of his visit was to clarify USG policies on detainees and refute any misperceptions and to build upon areas where there was agreement. He said that the U.S. considers itself to be in a state of war and that it applies the laws of armed conflict. He stressed that the U.S. is committed to the Geneva Conventions and to humane treatment of detainees. The U.S. believes the Geneva Conventions contain obligations as well as protections. The Conventions recognize lawful combatants in their text so by necessity there are unlawful combatants. Al Qaeda and Taliban do not abide by the obligations in the Conventions and are therefore not entitled to protection as lawful combatants. Although Al Qaeda and Taliban may not be entitled to protection as soldiers under the Geneva Conventions, both the President and the Secretary of Defense have directed that they be treated humanely, regardless of their status. Schaper asked whether, given the open-ended nature of the current conflict, it might

be worth exploring whether there was international consensus to deal with terrorists by adding to the international legal structure. OSD Associate General Counsel Davidson said the U.S. looked to existing legal frameworks for guidance and that the February 2002 Presidential direction on humane treatment of prisoners said the U.S. would treat prisoners in a manner consistent with the Geneva Conventions.

15. (C) DASD Waxman and party also participated in an extended expert-level meeting chaired by Amb. de Klerk which included MFA and MOD legal representatives, action officers from MFA's human rights, security policy and political affairs departments as well as the MOD general policy affairs department. De Klerk stressed that combating terrorism is one of the GONL's highest priorities, both politically and militarily. They also wanted to look at how to do this while maintaining respect for human rights. In that context, the GONL sought further information from the U.S. on the applicability of the Geneva Conventions, the status of prisoners at Guantanamo Bay and renditions. DASD Waxman said that aggressive waging of war against Al Qaeda is not inconsistent with humane treatment of prisoners. Concerning the Geneva Conventions, he said that to reward Al Qaeda and Taliban detainees with the guarantees of the Geneva Convention would only encourage terrorist activity. De Klerk said that in the GONL view if one does not qualify as a prisoner of war then one falls under the Fourth Geneva Convention. The Dutch position is that one is either a POW or else one is a civilian. The Netherlands takes the view that even if one does not observe the law, the Geneva Conventions still apply. Davidson said the U.S. did not share this view of how the Conventions apply, however, the U.S. treats detainees in a manner consistent with the principles of the Convention. She also noted that detainees at Guantanamo can challenge their detentions in court.

16. (C) Concerning Guantanamo, DASD Waxman said that to date, the U.S. has released 212 detainees, of which we know at least 12 that were transferred or released have returned to combat against the U.S. The U.S. allows ICRC representatives to visit with detainees at Guantanamo as well as at U.S. facilities at Abu Ghraib and Kandahar and also to have access to U.S. commanders. The President of the ICRC has also met with the President, Secretary of State, Secretary of Defense, Deputy Secretary of Defense and Vice Chief of the Joint Chiefs of Staff. De Klerk said he was pleased this dialogue existed but noted that certain requests of UNHCR Special Rapporteurs had been refused. He said this could strengthen the hand of other countries that deny access to the UNHCR Special Rapporteurs. Regarding the treatment of detainees, Davidson stressed that clear guidance was being provided to combatant commanders and that this guidance had been reviewed by the Department of Justice and Staff Advocates to confirm it comports with U.S. Federal Law and U.S. international obligations. The U.S. is also currently updating military manuals for dealing with detainees.

17. (C) In response to Dutch questions on renditions, Waxman said the U.S. does not send anyone to another country for the purpose of being tortured nor do we send anyone to a country where we believe it is more likely than not that the detainee will be tortured. We seek assurances from receiving countries that they will not be tortured and comply with our treaty requirements and international obligations.

18. (C) While noting the difference of interpretation of the Geneva Conventions, the Dutch side asked if it would be possible to reach some sort of statement of consensus on practices in treatment of detainees. This would be helpful to the Dutch government in answering parliamentary concerns, but might also help the U.S. in persuading other allies of its point of view. DASD Waxman said the Department of Defense would be interested in exploring the idea of such a statement. De Klerk expects to be visiting Washington in April and may follow up on this issue.

Comment:

19. (C) The Dutch underlined their strong appreciation for the opportunity to consult on these issues. Despite our disagreement over the status of Al Qaeda and Taliban detainees with respect to the Geneva Conventions, continuing dialogue with the USG on this issue will help the GONL manage domestic political questions. In addition, some sort of U.S.-Dutch joint statement of principles conferring the humane treatment of detainees would likely be of considerable help to the GONL in addressing parliamentary concerns. Given the Netherlands' strong reputation both globally and in Europe as outspoken defenders of human rights, association with the Dutch in such a joint statement might be useful in addressing this issue with other European allies and partners. Post appreciates DASD Waxman's last minute schedule change to accommodate this visit.

110. (U) DASD Waxman cleared this cable.  
SOBEL